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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1488th MEETING

Held at Headquarters, New York,
on Wednesday, 27 March 1996, at 10 a.m.

Chairman: Mr. BÁN
(Vice-Chairman)

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In the absence of Mr. Aguilar, Mr. Bán, Vice-Chairman, took the Chair.

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Zambia (continued) (CCPR/C/63/Add.3; HRI/CORE/1/Add.22/Rev.1)

Constitutional and legal framework within which the Covenant is implemented, non-discrimination and equality of the sexes, protection of the family, state of emergency, right to take part in the conduct of public affairs and rights of persons belonging to minorities (articles 2, 3, 4, 23, 26 and 27) (section I of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Kasanda and Mrs. Chigaga (Zambia) took places at the Committee table.

2. Mr. KASANDA (Zambia), replying to questions asked at the previous meeting relating to section I of the list of issues, said that only once since the introduction of the multi-party system had a state of emergency been declared, and it had lapsed after three months. That strictly defined period had been intended to prevent civil unrest and avert utter chaos. The declaration of a state of emergency was only a last resort in Zambia. Any person detained or restricted in his freedom of movement as a result did, of course, enjoy all the guarantees provided under article 26 of the Constitution, such as access to counsel and family members.

3. On the question of abortion, Zambia's legislation was among the most progressive in Africa or, for that matter, anywhere else in the world. His country's Deputy Minister of Health had been very active in the discussions at the 1995 World Summit for Social Development in Cairo. Abortion was allowed in his country on medical grounds, and women were guaranteed access to recently improved health and maternity care, which had resulted in a reduction of illegal abortions. It was difficult to cite accurate figures, because illegal abortions were often not reported or disguised as miscarriages. The problem of illegal abortions was in any case not a serious one in Zambia.

4. Mr. KRETZMER said that he still had no answer to his question as to whether there was any legislation prohibiting discrimination in the private sphere, such as in employment or housing. Under the Covenant, the State party had the duty to protect individuals against violations of their rights by private parties as well.

5. Mr. KASANDA (Zambia) said that the Constitution made any such discrimination, on the traditional grounds of sex, race and the like, illegal.

6. Mr. BHAGWATI noted that Zambia had ratified International Labour Organization (ILO) Convention No. 111, which prohibited discrimination in employment and occupation, and wondered whether any legislation had been enacted

to give effect to it. Also, his own question regarding the mandate of the MUNYAMA Commission on Human Rights and whether it had been set up by statute or administrative order still needed a reply.

7. Mr. KASANDA (Zambia) said that the ILO Convention was for the moment still at the ratification stage. The MUNYAMA Commission on Human Rights had been established under the Inquiries Act and its mandate was to look into alleged cases of abuse, torture and other human rights violations. Once it had made its report to the Government, its mandate had expired. The report was currently before parliament, which had yet to issue a white paper on it.

8. Ms. MEDINA QUIROGA said that there still had been no explanation of the consequences of a declaration by the President under article 31 of the Constitution that a situation existed which if allowed to continue might lead to a state of emergency. It was not clear if the President was allowed to derogate from certain rights, for instance; and whether article 25 also applied in such a situation.

9. Mrs. CHIGAGA (Zambia) said that the situation of threatened emergency with which article 31 of the Constitution was concerned was not as serious as the state of emergency governed by article 30. Under article 31, the President must ask parliament to support his declaration within seven days. The President could not derogate from fundamental rights under article 31, since his decision was discretionary and hence limited in scope. If after seven days parliament decided to support the President's declaration, the situation at that time became a state of emergency, under which there could be derogation.

Rights to life, treatment of prisoners and other detainees, liberty and security of the person, and right to a fair trial (articles 6, 7, 9, 10 and 14) (section II of the list of issues)

10. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Zambia, namely: (a) an enumeration of the offences punishable by the death penalty, and information on any intention to reduce the number of such offences and on the outcome of the current debate on the death penalty; (b) frequency of the imposition and execution of the death penalty, and the crimes involved, during the period under review; (c) information on the rules and regulations governing the use of weapons by the police and security forces, any violation of the rules and regulations and any measures taken to punish persons found guilty of such violations and to prevent their recurrence; (d) the outcome of the investigations by the MUNYAMA Commission on Human Rights into recent allegations of torture and information on any other complaints, during the period under review, of extrajudicial executions, disappearances, torture or other inhuman or degrading treatment or punishment and arbitrary detention, on any investigation carried out, in particular under the Police Act by courts or in respect of such violations, and any action by the authorities to punish members of the security, police and any other forces found guilty of such acts; (e) the implementation in practice of the procedure requiring courts to declare inadmissible evidence obtained under duress; (f) clarification as to how, in the light of difficulties mentioned in the report, the provisions of the Prisons Act on visits to prisons by magistrates were implemented in practice, and the extent to which the United Nations Standard Minimum Rules for the

Treatment of Prisoners were complied with and had been made known and accessible to the police, armed forces, prison personnel and others responsible for interrogations as well as to persons deprived of their liberty; (g) information on any provisions and practice relating to incommunicado detention; (h) information on how quickly after arrest a person's family was informed or a lawyer could be contacted and what was meant by the term "unreasonable delay"; (i) information on the implementation in practice of the right to a public trial as provided for under article 14, paragraph 1, of the Covenant.

11. Mr. KASANDA (Zambia) said that he had circulated copies, secured at the Committee's request, of the National Assembly (Powers and Privileges) Act Chapter 17 of the Laws of Zambia, and the parliamentary record of the ruling by the Speaker of the House concerning three journalists found guilty of contempt of parliament. The Government's basic argument was that three journalists had been found to have contravened the National Assembly (Powers and Privileges) Act by the Speaker of the House, who had referred the matter to the Standing Orders Committee. That Committee had taken various precedents into consideration, among them the practice in other Commonwealth parliaments, including that of the United Kingdom, and had been unanimous in resolving that the three were in gross contempt of the House and its members and had committed calculated breaches of parliamentary privileges by authoring highly inflammatory and manifestly contemptuous libelous articles meant to put the House into odium, contempt and ridicule. The punishments that had followed from that were self-explanatory.

12. Turning to sections II (a) and (b) of the list of issues, he read out article 12 of the Constitution, which protected the right to life. Zambia did have capital punishment, and the offences for which it could be imposed by law were murder and treason and, in some cases, aggravated armed robbery. As indicated in the report (para. 20), the law had recently been amended to allow a judge to take attenuating circumstances into account before the death sentence could be imposed for murder, and thus there was no mandatory death sentence in Zambia. Article 13 of the Constitution laid down the rules for deprivation of liberty. The death sentence was not frequently imposed and even more rarely carried out. In the period under review, for instance, there had been no executions since 1988. Zambia had been governed by two Christian presidents and that had perhaps been a factor. Currently, in the intensive debate in the country on whether or not to retain the death penalty (report, para. 18), those in judicial circles were leaning towards its abolition, although, of course, the national consensus would be followed.

13. With reference to section II (c) of the list of issues, the rules and regulations governing the use of weapons by the police and security forces were laid down in the Police Act Chapter 130 of the Laws of Zambia. Weapons could be used basically to ensure security of person. Their excessive use was a criminal offence liable to prosecution and to administrative actions such as suspension or dismissal. Law enforcement officers had been tried and convicted for such offences and their convictions had been intended as a deterrent.

14. Concerning section II (d) of the list, the MUNYAMA Commission on Human Rights had, as he had said earlier, submitted its report on alleged human rights abuses to the Government and the Government had yet to issue a white paper on it.

15. The inadmissibility of evidence obtained under duress (section II (e)) was dealt with under the Code of Criminal Procedure Chapter 160 of the Laws of Zambia, in the provisions governing the law of evidence. If an accused maintained that he had been forced to give evidence, the Court must stop for a "trial within a trial" to hear that charge, and had the power to declare such evidence inadmissible.

16. In connection with section II (f) of the list, the judge of a province normally made monthly visits under the Prisons Act Chapter 134 of the Laws of Zambia to monitor the well-being of prisoners. It was undeniable, however, that the country's economic problems had led to overcrowding and substandard prison facilities. Zambia's inability to meet the United Nations Standard Minimum Rules was not the result of a deliberate policy of neglect; indeed, the Standard Minimum Rules formed part of the syllabus in police academies and a process was under way to retrain members of the police force on the matter.

17. As to section II (g) of the list, he was not aware of any incommunicado detention, and he doubted that the practice existed because the Constitution mandated publication of notifications of detention within seven days. Perhaps there had been abuses earlier, under the one-party State. With regard to section II (h), a person's family must be informed as soon as practicable or reasonable. Since arrests were not arbitrary, families were well informed. In most cases, persons were escorted to the police station by either a lawyer or a family member. An unreasonable delay in bringing a suspect before a court would be deemed to be anything exceeding 48 hours. As to section II (i), under Zambian law all trials were held in open court, except in certain cases involving national security, juvenile offenders or the crimes of rape or defilement. The public had free access to trial proceedings.

18. Lord COLVILLE said that he was very pleased to see that murder in Zambia was no longer punishable by a mandatory death penalty or life imprisonment. He would welcome further details on the reasoning that had led to such a positive change in the law. With regard to cases involving suspicion that evidence had been obtained under duress, the reporting State should indicate on whom the burden of proof lay. It was unclear whether it devolved upon the prosecution to prove beyond reasonable doubt that a confession had not been extracted under duress.

19. It would also be useful to receive more information on closed trials involving serious sex crimes; while he appreciated the need to protect the victim, on the whole it was undesirable that such cases should be held in camera.

20. Mr. KLEIN, referring to article 6, paragraph 3, of the Covenant, asked why Zambia had not acceded to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. It appeared contradictory that Zambia had no specific legislation prohibiting genocide, whereas certain articles in the Penal Code in fact outlawed the crime. Similarly, the reporting State should explain why it had hesitations about acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

21. Regarding acts of torture and ill-treatment by police officers, he would like to know more about the consequences for individuals found guilty of such offences. And with reference to paragraph 25 of the Zambian report, he requested further details about the circumstances in which corporal punishment could be administered.

22. Mrs. CHANET regretted that legal officers with extensive knowledge of the Zambian legal system had been unable to submit the report in person. On the question of the death penalty, she asked for more data on the number of capital sentences which could have been handed down but in fact had not been.

23. With reference to the parliamentary white paper on torture stemming from the findings of the MUNYAMA Human Rights Commission, she insisted that any allegation of torture should be immediately looked into regardless of the timing and contents of the white paper itself.

24. Regarding the issues raised under article 9, paragraph 3, and article 14, paragraph 1, of the Covenant in connection with the detention of journalists who had brought ridicule and contempt on the National Assembly, it seemed to her that some aspects of Zambian legislation were archaic. Specifically, the reporting State should explain how the decision of the Speaker of the National Assembly conformed to other laws and the Constitution of Zambia. All arrests should conform to the law of the land, and, in addition, the Covenant stipulated that all detainees had to be brought before a judge. It was unclear how a parliament could act as both judge and jury at the same time; nor did she understand how the accused could have been sentenced in their absence. She asked why the Speaker had not passed the matter over to the proper prosecuting authorities, and requested clarification as to the source of the powers of the parliamentary Standing Orders Committee.

25. Mr. LALLAH said that the representatives of Zambia had implied that the provisions of article 9 of the Covenant were fully reflected in the country's Constitution. However, the manner in which the journalists had been treated contravened both Zambian law and the Covenant.

26. Under section 13 of the Zambian Constitution, no person could be deprived of his liberty except as authorized by law in specific cases. The Constitution itself limited the extent to which liberties could be restricted. Although the Constitution provided for court orders in the matter of contempt, the same did not apply to parliament. Section 87 of the Constitution allowed parliament to make laws to protect its privileges, but there was no mention of sending people to prison.

27. Sections 19 and 21 of the National Assembly (Powers and Privileges) Act defined contempt of parliament and stipulated that, on conviction, an offender could be liable to imprisonment and a fine. But section 27 of the same Act clearly stated that only the Director of Public Prosecutions could initiate criminal proceedings upon written notice from the Speaker, and only the courts could sentence the accused to a term of imprisonment. Parliament was not a court of law and had no power to send people to prison without the intervention of the courts. Moreover, section 28 of the Act limited the powers of the Assembly to merely reprimanding a person found guilty of contempt. It had been

extremely unfortunate that no member of the Assembly had pointed out the legal irregularity. It appeared that Zambian law and the Zambian Constitution conformed to the provisions of article 9 of the Covenant, but unfortunately the rights guaranteed therein could not be safeguarded despite the fine constitutional and legal framework that existed in the country.

28. Mr. PRADO VALLEJO said he was aware that an ad hoc committee had been set up by the Zambian Government to investigate serious and widespread allegations of torture. Unfortunately the committee's report had not been made public, which was a serious drawback in attempting to assess the magnitude of the torture problem in the country. Regarding prison conditions, he said that while he recognized the financial constraints upon the Government, he nevertheless regretted the lack of an overarching programme to alleviate the acute problem of prison overcrowding that existed in Zambia.

29. In connection with the points raised by Mrs. Chanet and Mr. Lallah, he said that parliament's irregular conduct had also raised issues pertaining to freedom of expression under article 19 of the Covenant. In practice, the decision handed down by the Standing Orders Committee meant that any anti-government opinion could be considered as potentially seditious and could render journalists liable to systematic persecution. He was aware that at least one independent newspaper had been forced to close in Zambia during the previous few months. Parliament's exercise of both legislative and judicial powers was a very grave cause for concern.

30. Overall, there appeared to be a wide gap in Zambia between legislation on paper and the real state of affairs. The provisions of the Covenant were not being observed because Zambian citizens lacked effective remedies or safeguards. In particular, he was concerned that an overly broad interpretation of legislation relating to State security was being abused, thus undermining freedom of expression.

31. Mr. BUERGENTHAL asked for further details of a reported incident in which military personnel had allegedly attacked a village in retaliation for the earlier killing of one of their number, as a result of which two villagers had been killed and many others wounded. No action had apparently been taken against those involved.

32. There appeared to be several thousand people in detention awaiting trial, some of them for more than 10 years, in contravention of article 7. He wished to know whether any action was being taken in that regard.

33. There had also been reports that some police stations were acting as collection centres for debts, with debtors being detained without charges being brought, and that police officers were taking a percentage of the sums involved. If true, that would constitute a violation of article 9, and he requested clarification.

34. The action taken against the journalists for contempt of parliament was a clear and serious violation of human rights. He urged the delegation to transmit the Committee's views to the Government, at the current session, in the hope that action could be taken immediately to release them.

35. Ms. EVATT said that she supported earlier speakers on the question of prison conditions and hoped that the report of the MUNYAMA Human Rights Commission would soon be issued. She also endorsed the comments on the number of prisoners held on pre-trial remand.

36. The delegation's apparent claim that economic circumstances made it hard to improve prison conditions and to halt the spread in prisons of such diseases as cholera was incredible, and she requested further explanation.

37. She agreed that immediate action was required in respect of the journalists found guilty under the National Assembly (Powers and Privileges) Act, and wished to draw attention to the plight of the third, female, journalist, who was pregnant. That situation gave cause for great concern.

38. Mr. FRANCIS said that emergency action was needed to tackle the problem of overcrowding in prisons. Even in a third world country action could be taken, perhaps by using the labour force to make prisons self-sufficient, if money was the root of the problem. With regard to torture, the authorities should realize that it was important to tackle the issue as soon as possible. In particular, the MUNYAMA report should be issued quickly.

39. Executive power in Zambia was based on the Westminster model. It was therefore amazing that in the case of the journalists parliament should be complainant, prosecutor and judge. The legal authorities should take prompt action to release the prisoners.

40. Ms. MEDINA QUIROGA said that under article 43 (1) of the Constitution no civil proceedings could be instituted against the President for acts performed in his private capacity, which was incompatible with article 14 of the Covenant. Such a provision could be justified only with respect to official acts. She asked for clarification of the indication in the report that juveniles could be tried together with adults. She agreed with previous speakers regarding the action taken against journalists for contempt of parliament. The delegation should inform the Zambian authorities that there was an urgent need to release those imprisoned and to take no further action against the third journalist.

41. Mr. EL-SHAFEI said that the case of the imprisoned journalists was unprecedented in the history of the Committee. Such action was clearly incompatible with article 14 and gave cause for grave concern. Zambia should set an example for other African States.

42. Mr. BHAGWATI said that the journalists had simply been exercising their freedom of expression, and there had been no need for such action. Public life must be robust, even if involving caustic criticism of the authorities. The government action reeked of illegality, since the National Assembly had no inherent power to commit the journalists for contempt, as was apparent from articles 13 and 87 of the Constitution in conjunction with sections 19 (e), 21 and 27 of the National Assembly (Power and Privileges) Act. Even if such power existed it would still be subject to natural justice and the requirement for a fair trial. The treatment meted out to the journalists was outrageous. Immediate action should be taken to annul the decision.

43. The delegation must transmit the Committee's views to the President and Speaker. In that connection, he noted that the Committee's opinions were binding on Zambia, as a party to the Optional Protocol.

44. He wished to know whether confessions given before police officers were admissible, or whether only those given before a judge were valid. On the question of bail, he noted that the use of monetary bail together with a solvency test would make it difficult for the poor to be granted bail, and asked for an explanation of the situation.

45. Mr. KRETZMER said that the action taken by Parliament against the journalists raised a serious question regarding the independence of the judiciary and constituted a violation of articles 9 and 14 of the Covenant. With regard to torture and police misconduct, he asked what the procedure was governing complaints in such instances and whether there was any independent mechanism for the investigation of such allegations.

46. The CHAIRMAN, speaking in his personal capacity, said that the fact that there had not been any executions since 1989 was a positive aspect of the application of article 6. Nevertheless, more than one hundred people were still awaiting execution or the possibility of pardon, some of whom had been held for more than 30 years. He asked what the Government's policy was in respect of individuals held for such lengthy periods on death row and whether there were any plans to alter it.

The meeting was suspended at 12.25 p.m. and resumed at 12.35 p.m.

47. Mrs. CHIGAGA (Zambia) said that the discretion given to judges in murder cases had been introduced as a result of a particular case in the mid-1980s, in which a woman had been convicted of the premeditated murder of her husband. At the time, the law had been such that the judge had no choice but to sentence her to death, despite the brutality the woman had suffered at the hands of her husband. She had been sentenced in accordance with the law, but with the recommendation that leniency should be shown.

48. Mr. KASANDA (Zambia), responding to a question regarding the admissibility of confessions in evidence, said that the burden of proof was on the accused in cases where the latter claimed that a confession had been made under duress, and it was for the judge to determine, on the basis of any evidence offered by the accused, whether the confession had indeed been obtained improperly. Clarification had also been requested regarding the fact that trials were not held in open court in cases involving sexual offences such as rape; he said that the object was to protect victims of such assaults from the ordeal of having to give, in a public forum, detailed descriptions of what had happened to them. There was no general rule as to whether such cases should be heard in open court; each case was treated on its merits and particular consideration was given to the age of the victim.

49. He confirmed that Zambia had acceded neither to the Convention on the Prevention and Punishment of the Crime of Genocide nor the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There was no compelling reason why it had not done so; it was the result of an omission rather than a deliberate decision, and the Constitution and laws of

Zambia included provisions for the prevention and punishment of such crimes. In response to a question regarding the prosecution of acts of brutality by police officers, he said that when it was found that there was a case to answer, criminal proceedings were brought against the offenders, and there could also be administrative sanctions such as demotion or dismissal. As to the use of corporal punishment, he said that it was a matter for the discretion of the magistrate or judge in each case; where a young offender was concerned, it was often considered that a few strokes of the cane were preferable to a prison sentence, which could make matters worse where a juvenile was concerned.

50. Concerning prison conditions, he said that many accounts were exaggerated; the extent of problems such as disease, malnutrition and inhuman treatment in Zambian prisons had been greatly overstated. The Government accepted that there was overcrowding, and that it could not be justified by the existence of economic difficulties. Any epidemics among the prison population would be dealt with as quickly as possible, and the Government was currently taking measures to deal with the problem of food shortages. Certain measures had also been instituted to reduce overcrowding; they included an annual general amnesty, which had led to the release of about 1,000 prisoners in 1995. Eight hundred more were currently being considered for release. The Government had created a national committee on penal reform to advise the Government on additional measures to improve conditions. Community service was being considered as an alternative to prison sentences, and there were a number of self-help projects, such as the manufacture by prisoners of furniture the proceeds from which would be used to improve conditions. A report would shortly be produced by the Committee.

51. He regretted that he did not have statistics regarding the number of persons sentenced to death or executed; he undertook to provide that information in written form in due course. As to the existence of capital punishment in Zambia, he said that there was a tendency to impose the death penalty less often, and that it was not inconceivable that it might eventually be abolished. Public opinion, however, was strongly in favour of capital punishment, considering that it was real deterrent. Responding to questions as to the outcome of investigations undertaken by the MUNYAMA Human Rights Commission, he said that the Government had set up the Commission, and had nothing to gain by hiding its conclusions. The Commission's report had not yet been published because the Government needed time to gather evidence and establish the truth regarding certain allegations contained in it, in order to be in a position to bring prosecutions where appropriate. Most of the alleged human rights violations had in fact taken place under the previous regime; the new Government, therefore, had every interest in allowing the report to be made public.

52. Concerning any violations of the regulations governing the use of weapons by the police and security forces, he said that in cases where soldiers had committed offences involving misuse of their weapons, compensation had been paid to the victims and the offenders had been court martialled. As to questions regarding corruption in the police force, individual officers sometimes did give way to temptation but there was no systematic corruption. The Government had appointed a commission to deal with such matters and to investigate complaints and oversee the investigation and prosecution of cases of corruption. Police officers found guilty of corruption faced very severe penalties.

The meeting rose at 1 p.m.